

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1946

No. 158

Office - Supreme Court, U. S.

FILED

JUN 10 1946

CHARLES ELMORE SIMPSON
CLERK

J. E. HADDOCK, LIMITED, and UNITED
PACIFIC INSURANCE COMPANY,

Petitioners,

VS.

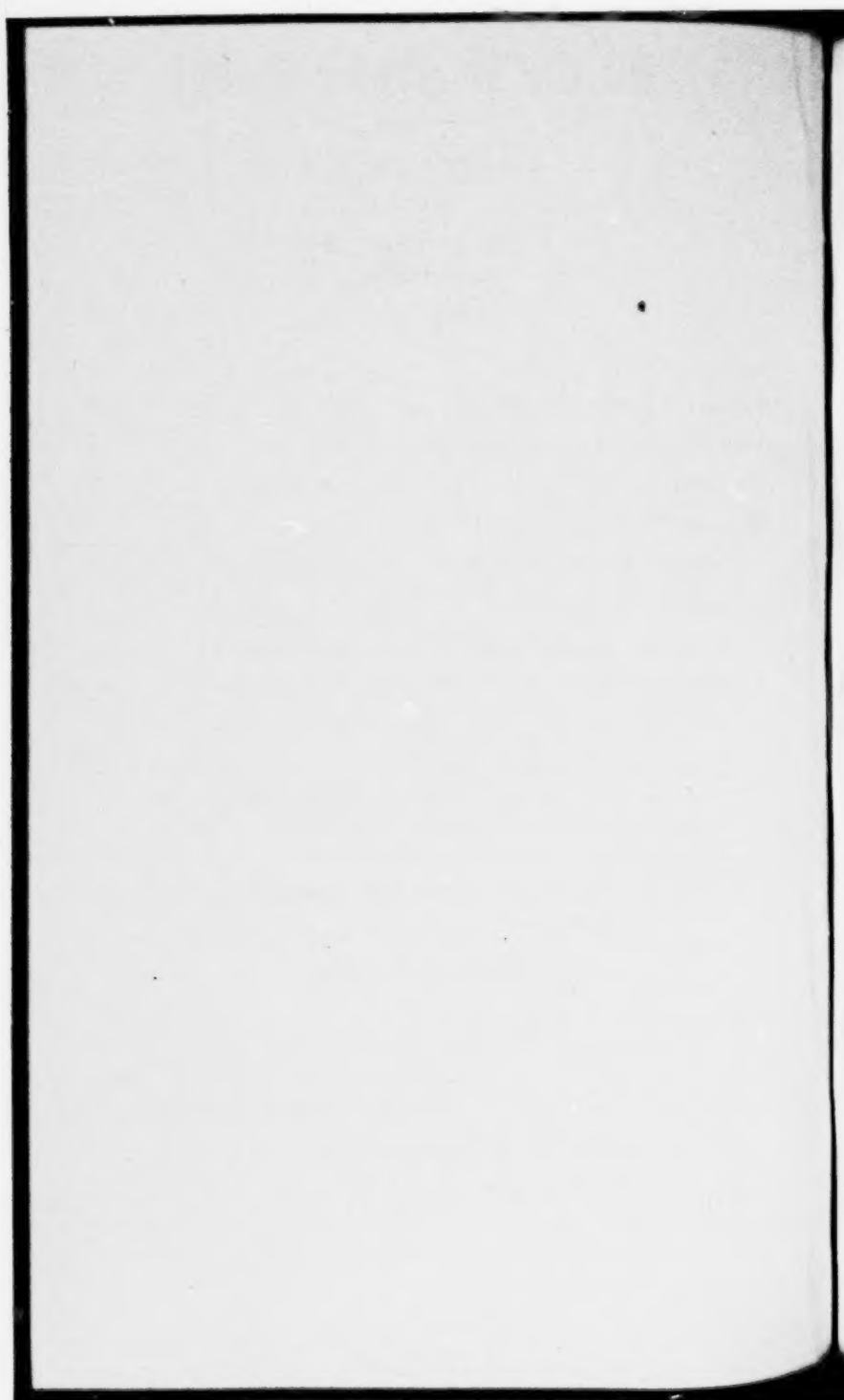
WARREN H. PILLSBURY, Deputy Commis-
sioner, and HUGH A. VORIS, Assistant
Deputy Commissioner, of the United
States Employees' Compensation Com-
mission for the 13th Compensation Dis-
trict, and ADELA F. MUCH,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

✓ FRANK J. CREEDE,
220 Bush Street, San Francisco 4, California,
Counsel for Petitioners.

KEITH, CREEDE & SEDGWICK,
MCCOMB & NORDMARK,
GODFREY NORDMARK,
220 Bush Street, San Francisco 4, California,
Of Counsel.



Subject Index

	Page
Opinions below	2
Summary statement of the matter involved	2
Jurisdiction	5
Questions presented	5
Statutes and rules of court involved.....	5
Reasons relied upon for allowance of the writ	8
1. The decision of the Circuit Court of Appeals involves an important question, on which the decisions are in conflict, respecting the proper procedure after a motion to dismiss is granted under Rule 41(b) on the ground that upon the facts and the law a plaintiff has shown no right to relief	8
2. The decision of the Circuit Court of Appeals is in conflict with the decisions of this court and with its own decisions on important questions in the administration of admiralty jurisprudence	10
3. The decision of the Circuit Court of Appeals presents a situation meriting an exercise by this court of its supervisory power to establish and maintain fair standards of procedure in subordinate federal courts	12
Conclusion	15

Table of Authorities Cited

Cases	Pages
Alaska Packers Assn. v. Pillsbury, 301 U.S. 174, 57 S.Ct. 682, 683, 81 L.Ed. 988	10
Anderson v. United States, 318 U.S. 350, 351, 63 S.Ct. 599, 87 L.Ed. 829	12
Bach v. Friden-Calculating Mach. Co., 6 Cir. 1945, 148 F. 2d 407	10
Bowles v. Russell Packing Co., 7 Cir. 1944, 140 F. 2d 354..	9
Brown v. Quinlan, 7 Cir. 1943, 138 F. 2d 228	9
Crescent Wharf & Warehouse Co. v. Pillsbury, 9 Cir. 1938, 93 F. 2d 761	10
Crowell v. Benson, 285 U.S. 22, 52 S.Ct. 285, 76 L.Ed. 598..	10
Gary Theatres Co. v. Columbia Pictures Corp., 7 Cir. 1941, 120 F. 2d 891	10
Kelley v. Everglades Drainage Dist., 319 U.S. 415, 63 S.Ct. 1141, 87 L.Ed. 1485	9
Mayo v. Lankland Highlands Canning Co., 309 U.S. 310, 60 S.Ct. 517 84 L.Ed. 774	9
McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819	12
Monarch Brewing Co. v. George J. Meyer Mfg. Co., 130 F. 2d 582	13
Peoples Bank v. Federal Reserve Bank of San Francisco, 149 F. 2d 850	13
Perry v. Baumann, 122 F. 2d 409	9, 13
Polaroid Corporation v. Markham, C.A.D.C. 1945, 151 F. 2d 89	9
Reconstruction Finance Corp. v. Prudence S. A. Group, 311 U.S. 579, 61 S.Ct. 331, 85 L.Ed. 364	13
Rorick v. Commissioners, 307 U.S. 208, 59 S.Ct. 808, 83 L.Ed. 1242	13
Schad v. Twentieth Century-Fox Film Corp., 3 Cir. 1942, 136 F. 2d 991	10

TABLE OF AUTHORITIES CITED

iii

	Pages
The Sapphire, 18 Wall. (85 U.S.) 51, 21 L.Ed. 814	11
Twin Harbor Stevedoring & Tug Co. v. Marshall, 9 Cir. 1939, 103 F. 2d 513	10
Uhl v. Dalton, 151 F. 2d 502	13
Woodruff v. Heiser, 10 Cir. 1945, 150 F. 2d 869	9
Young v. United States, 9 Cir. 1940, 111 F. 2d 823	9, 13

Rules

Federal Rules of Civil Procedure:

Rule 41 (28 U.S.C.A., fol. sec. 723e)	3
Rule 41 (b) (28 U.S.C.A., fol. sec. 723e)	5
Rule 52(a) (28 U.S.C.A., fol. sec. 723e)	3, 6, 8, 11
Rule 58 (28 U.S.C.A., fol. sec. 723e)	4, 6, 8
Rule 81 (a) (28 U.S.C.A., fol. sec. 723e)	7, 11

Statutes

Admiralty Rule 46½ (28 U.S.C.A., sec. 723)	3, 7, 11
Judicial Code, as amended, sec. 240 (a) (28 U.S.C.A., sec. 347)	5
 Longshoremen's and Harbor Workers' Compensation Act:	
Section 21 (44 Stat. 1436; 33 U.S.C.A., sec. 921)	6, 10
(33 U.S.C.A., secs. 901-950)	2, 5

Texts

1 American Jurisprudence 605, sec. 114	11
4 Benedict on Admiralty 17, sec. 554	11

1. The first part of the report is a general
introduction to the subject of the study.
2. The second part is a description of the
methodology used in the study.
3. The third part is a description of the
results of the study.
4. The fourth part is a discussion of the
results of the study.
5. The fifth part is a conclusion of the
study.

6. The sixth part is a list of references.
7. The seventh part is a list of appendices.
8. The eighth part is a list of figures.
9. The ninth part is a list of tables.
10. The tenth part is a list of footnotes.

11. The eleventh part is a list of
acknowledgments.
12. The twelfth part is a list of
dedications.
13. The thirteenth part is a list of
curriculum vitae.

14. The fourteenth part is a list of
other documents.
15. The fifteenth part is a list of
other materials.

In the Supreme Court

**OF THE
United States**

OCTOBER TERM, 1946

No.

**J. E. HADDOCK, LIMITED, and UNITED
PACIFIC INSURANCE COMPANY,**
Petitioners,

vs.

**WARREN H. PILLSBURY, Deputy Commis-
sioner, and HUGH A. VORIS, Assistant
Deputy Commissioner, of the United
States Employees' Compensation Com-
mission for the 13th Compensation Dis-
trict, and ADELA F. MUCH,**
Respondents.

PETITION FOR WRIT OF CERTIORARI

**to the United States Circuit Court of Appeals
for the Ninth Circuit.**

To the Honorable Supreme Court of the United States:

Petitioners, J. E. Haddock, Limited, and United Pacific Insurance Company, respectfully pray for a

writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review the final judgment of said court in the above entitled cause, entered April 5, 1946, dismissing their appeal from the judgment of the District Court of the United States for the Northern District of California, Southern Division.

OPINIONS BELOW.

No opinion was rendered by the Circuit Court of Appeals in dismissing the appeal on April 5, 1946. (R. 194-195.) The opinion rendered by the said court on May 2, 1946, in denying the petition for rehearing, is contained in the record. (R. 199-203.)

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioners brought injunction proceedings in the District Court to set aside an award of compensation made by the respondent Deputy Commissioner under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C.A., secs. 901-950) in favor of respondent Adela F. Much. (T. 2-9.) In the prayer to their complaint, filed July 28, 1944 (R. 15), they asked that the Deputy Commissioner be required to certify to the court a record of his proceedings, including the testimony and evidence upon which he acted. They asked for a temporary injunction. And they asked for a mandatory injunction, after full hearing, setting aside the compensation award. (R. 8-9.)

A motion for a temporary injunction was denied on August 14, 1944. (R. 196.) On October 12, 1944, the Deputy Commissioner filed his certified copy of the record, including the testimony and evidence. (R. 32-186.) On the next day, and based upon the complaint and the said certified record, the Deputy Commissioner filed a motion, under Rule 41 of the Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c) to dismiss the complaint on the ground that upon the facts and the law the complainants had shown no right to relief. (R. 17-18.) After hearing, briefing, and submission (R. 196-197), the court rendered a "Memorandum Opinion and Order Sustaining Order of Compensation Commissioner", on March 15, 1945. (R. 18-19.) This "memorandum opinion and order" contained a brief review of the facts and the law and ended with the words, "The order of the Compensation Commissioner is sustained and the complaint is dismissed". (R. 19.) It was filed with the clerk and noted in the civil docket of the court on March 15, 1945. (R. 197.) Petitioners did not appeal or attempt to appeal from the "memorandum opinion and order" of March 15, 1945.

On June 7, 1945, respondents prepared and lodged with the clerk of the court their proposed findings of fact and conclusions of law. (R. 20-23.) These conformed to the requirements of Rule 52 (a) of the Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c) as well as Admiralty Rule 46 $\frac{1}{2}$ (28 U.S.C.A., sec. 723). They were signed by the trial court and filed with the clerk on June 14, 1945. (R. 23.) Pursuant to Rule 58 of the Federal Rules of Civil

Procedure (28 U.S.C.A., fol. sec. 723c), respondents prepared and submitted to the trial judge a form of judgment which he approved and signed on August 27, 1945. (R. 23-24.) This judgment dismissed the complaint "without leave to amend", affirmed the award of compensation, and required each party to pay "its" own costs. (R. 24.) It was filed with the clerk and noted in the civil docket of the court on August 27, 1945. (R. 197.) Petitioners filed their notice of appeal therefrom on September 14, 1945. (R. 25.)

When the appeal came on for hearing, it was dismissed by the Circuit Court of Appeals without opinion. (R. 193-194.) The court held that it did not have jurisdiction to entertain an appeal from the judgment entered on August 27, 1945. It held that the "memorandum opinion and order" of March 15, 1945, was the final judgment in the action. It held that the operative effect thereof was to render idle, meaningless, and purposeless the actions of the trial court and counsel respecting findings of fact and conclusions of law and a judgment based thereon. It held that the operative effect of the "memorandum opinion and order" of March 15, 1945, was to render abortive any appeal or attempted appeal from the judgment entered on August 27, 1945. It adhered to these holdings in denying the petition for rehearing. (R. 198-203.)

JURISDICTION.

Jurisdiction of this court is invoked under section 240 (a) of the Judicial Code, as amended. (28 U.S. C.A., sec. 347.)

QUESTIONS PRESENTED.

1. Did the Circuit Court of Appeals have jurisdiction to entertain the appeal from the judgment entered in the District Court on August 27, 1945?

2. Is a suit to set aside an award of compensation under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C.A., secs. 901-950), a suit in admiralty and subject to the principles of admiralty jurisprudence?

3. Where the District Court and counsel for the litigants therein regarded a "memorandum opinion and order" as preliminary to formal findings of fact and conclusions of law and judgment and acted accordingly, is it a fair standing of procedure for a Circuit Court of Appeals to regard such "memorandum opinion and order" as the final judgment in the action?

STATUTES AND RULES OF COURT INVOLVED.

1. On the first question:

Rule 41 (b), Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c):

"* * * After the plaintiff has completed the presentation of his evidence, the defendant, with-

out waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

* * *

Rule 52 (a), Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c):

"In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment;

* * *

Rule 58, Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c):

"* * * When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter the judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk.

* * *

2. On the second question:

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1436; 33 U.S.C.A., sec. 921):

"(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making

the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage."

Admiralty Rule 46½ (28 U.S.C.A., sec. 723) :

"In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rule 49."

Rule 81 (a), Federal Rules of Civil Procedure (28 U.S.C.A., fol. sec. 723c) :

These rules "apply to proceedings for enforcement or review of compensation orders under the

Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, secs. 18, 21 (44 Stat. 1434, 1436), U.S.C., Title 33, secs. 918, 921, except to the extent that matters of procedure are provided for in that Act."

**REASONS RELIED UPON FOR ALLOWANCE
OF THE WRIT.**

1. **THE DECISION OF THE CIRCUIT COURT OF APPEALS INVOLVES AN IMPORTANT QUESTION, ON WHICH THE DECISIONS ARE IN CONFLICT, RESPECTING THE PROPER PROCEDURE AFTER A MOTION TO DISMISS IS GRANTED UNDER RULE 41 (b) ON THE GROUND THAT UPON THE FACTS AND THE LAW A PLAINTIFF HAS SHOWN NO RIGHT TO RELIEF.**

The Circuit Court of Appeals viewed the informal "memorandum opinion and order" of March 15, 1945, as the final judgment in the action, and accordingly decided that it did not have jurisdiction to entertain the appeal from the formal judgment of August 27, 1945. The formal judgment, approved by the court under Rule 58, was based upon findings of fact and conclusions of law conforming to Rule 52 (a). The informal "memorandum opinion and order" was lacking in these respects. If it be determined, therefore, that the case was one in which it was mandatory upon the trial court to make findings of fact and conclusions of law, the error of the decision of the Circuit Court of Appeals is manifest.

The cases are uniform in holding that it is mandatory upon a trial court to make findings of fact and conclusions of law, pursuant to said Rule 52 (a), "in all actions tried upon the facts without a jury".

Kelley v. Everglades Drainage Dist., 319 U.S. 415, 417, 63 S.Ct. 1141, 1143, 87 L.Ed. 1485;
Mayo v. Lankland Highlands Canning Co., 309 U. S. 310, 316, 60 S. Ct. 517, 520, 84 L.Ed. 774;
Polaroid Corporation v. Markham, C.A.D.C. 1945, 151 F. 2d 89, 90;
Woodruff v. Heiser, 10 Cir. 1945, 150 F. 2d 869, 871;
Bowles v. Russell Packing Co., 7 Cir. 1944, 140 F. 2d 354, 355;
Brown v. Quinlan, 7 Cir. 1943, 138 F. 2d 228, 229.

The motion to dismiss in the present action (R. 17-18) was clearly under Rule 41 (b), for it was made on the ground that upon the law and the facts the complainants had shown no right to relief. The hearing thereon was in reality the trial of the action with the trial court having before it all the evidence consisting of the certified record of the proceedings before the Deputy Commissioner, including the evidence and testimony. Therefore, the determinative question is this: Was it mandatory upon the court in granting the motion to dismiss under Rule 41 (b) to make findings of fact and conclusions of law under Rule 52 (a)?

The decisions answering this determinative question are in conflict. The implied answer in the present case is in the negative. Heretofore the same court has answered the question in the affirmative. (*Young v. United States*, 9 Cir. 1940, 111 F. 2d 823, 824; *Perry v. Baumann*, 9 Cir. 1941, 112 F. 2d 409, 410.) An affirmative answer has also been given in the Sixth Circuit

(*Bach v. Friden-Calculating Mach. Co.*, 6 Cir. 1945, 148 F. 2d 407, 408-411), and in the Seventh Circuit (*Gary Theatres Co. v. Columbia Pictures Corp.*, 7 Cir. 1941, 120 F. 2d 891, 892). In the Third Circuit, however, the answer has been in the negative. (*Schad v. Twentieth Century-Fox Film Corp.*, 3 Cir. 1942, 136 F. 2d 991, 992-3.)

In view of the conflict of decisions, the importance of a decision on the subject by this court is obvious.

2. THE DECISION OF THE CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND WITH ITS OWN DECISIONS ON IMPORTANT QUESTIONS IN THE ADMINISTRATION OF ADMIRALTY JURISPRUDENCE.

This court has declared that the jurisdiction conferred by section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act is admiralty jurisdiction.

Crowell v. Benson, 285 U.S. 22, 36-65, 52 S.Ct. 285, 287-98, 76 L.Ed. 598;

Alaska Packers Assn. v. Pillsbury, 301 U.S. 174, 175, 57 S.Ct. 682, 683, 81 L.Ed. 988.

The declarations of the Circuit Court of Appeals for the Ninth Circuit are to the same effect.

Twin Harbor Stevedoring & Tug Co. v. Marshall, 9 Cir. 1939, 103 F. 2d 513, 517 (Mathews, J.);

Crescent Wharf & Warehouse Co. v. Pillsbury, 9 Cir. 1938, 93 F. 2d 761, 762.

In exercising admiralty jurisdiction, the court may change or correct its decree after the determination of the case. (1 American Jurisprudence 605, sec. 114.) The awarding or withholding of costs is entirely under the control of the admiralty court. (*The Sapphire*, 18 Wall. (85 U.S.) 51, 21 L.Ed. 814, 816.) The final decision of an admiralty court "is not that which decides the substantial merits of the suit, but that which completes the decretal action of the court in the cause". (4 Benedict on Admiralty 17, sec. 554.) Hence, "as long as any order remains to be made, *as for costs* * * * the appeal cannot be taken before such order is entered". (4 Benedict on Admiralty 17, sec. 554.)

Under admiralty jurisprudence, the informal "memorandum opinion and order" of March 15, 1945, cannot be regarded as the final decision or decree in the case. It did not dispose of the entire case. For example, it left open and undetermined the matter of costs. (T. 18-19.) That matter was not determined until the formal judgment was entered on August 27, 1945—a judgment based upon findings of fact and conclusions of law which conformed not only to Rule 52 (a) of the Federal Rules of Civil Procedure but also to Admiralty Rule 46 $\frac{1}{2}$. Therefore, under admiralty jurisprudence, the formal judgment of August 27, 1945, must be regarded as the final judgment in the action.

The Circuit Court of Appeals has held in effect that the admiralty jurisdiction of the District Court was impaired by Rule 81 (a) of the Federal Rules of Civil Procedure making those Rules applicable to proceed-

ings to review compensation awards under the Longshoremen's Act. (R. 201.) It held, in effect, that it was required to dismiss the appeal of petitioners because the District Court was not exercising admiralty jurisdiction. This was error. The applicability of these procedural rules to courts exercising admiralty jurisdiction cannot be deemed to oust them from exercising that jurisdiction and applying admiralty principles. Otherwise stated, nothing in those procedural rules makes it necessary to say that the informal "memorandum opinion and order" of March 15, 1945, was the final judgment in the action when, in fact, principles of admiralty jurisprudence require it to be said that the formal judgment of August 27, 1945, was the final judgment in the action.

3. THE DECISION OF THE CIRCUIT COURT OF APPEALS PRESENTS A SITUATION MERITING AN EXERCISE BY THIS COURT OF ITS SUPERVISORY POWER TO ESTABLISH AND MAINTAIN FAIR STANDARDS OF PROCEDURE IN SUBORDINATE FEDERAL COURTS.

As occasion arises this court has exercised its supervisory power to establish and maintain fair standards of procedure in subordinate federal courts. An exercise of that power was the basis for granting certiorari in *McNabb v. United States*, 318 U.S. 332, 333-342, 63 S.Ct. 608, 609, 612-614, 87 L.Ed. 819, and *Anderson v. United States*, 318 U.S. 350, 351, 63 S.Ct. 599, 87 L.Ed. 829, where the administration of criminal justice was concerned. The same supervisory power was exercised to attain substantial justice in *Rorick v. Commis-*

sioners, 307 U.S. 208, 213, 59 S.Ct. 808, 811, 83 L.Ed. 1242, and *Reconstruction Finance Corp. v. Prudence S. A. Group*, 311 U.S. 579, 583, 61 S.Ct. 331, 333, 85 L.Ed. 364, where the administration of appellate justice was concerned. Petitioners invoke that supervisory power.

Before the present decision, the Circuit Court of Appeals for the Ninth Circuit had advised subordinate courts that it was mandatory upon them to make findings of fact and conclusions of law in similar situations. (*Young v. United States*, 111 F. 2d 823, 824; *Perry v. Baumann*, 122 F. 2d 409, 410.) And it had advised appellants that in the matter of appeals the "memorandum opinion and order" of a trial judge would be regarded as the trial judge intended and regarded it. (*Uhl v. Dalton*, 151 F. 2d 502; *Peoples Bank v. Federal Reserve Bank of San Francisco*, 149 F. 2d 850, 851; *Monarch Brewing Co. v. George J. Meyer Mfg. Co.*, 130 F. 2d 582.)

By the present decision, however, the actions of the trial judge in complying with the previous decisions of the higher court are regarded as idle, meaningless, and purposeless, and the petitioners are deprived of a hearing on the merits of the appeal because they (and the same is true of the respondents) regarded the "memorandum opinion and order" of March 15, 1945, as the trial judge intended and regarded it.

That the trial judge did not regard the said "memorandum opinion and order" as the final judgment in the action is plain, for he made and signed findings of fact and conclusions of law and signed a judgment

based thereon. That the respondents did not regard the said "memorandum opinion and order" as the final judgment in the action is equally plain, for within the time in which petitioners might have appealed from said "memorandum opinion and order" had it been regarded as the final judgment in the action, respondents prepared and proposed the said findings of fact and conclusions of law, and later had the judgment of August 27, 1945, prepared, signed, and entered. Under such circumstances, if petitioners had attempted to appeal from the said "memorandum opinion and order" the dismissal of the appeal as premature would have been inevitable under the authorities just cited.

Manifestly, the Circuit Court of Appeals has approved a standard of procedure which is unfair to trial courts and appellants and opposed to substantial justice. Petitioners therefore invoke the supervisory power of this court to disapprove such standard and to permit the hearing of their appeal on the merits.

CONCLUSION.

Wherefore, petitioners respectfully pray that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Ninth Circuit and that the final judgment of said court dismissing the appeal in said cause be reviewed and reversed.

Dated, San Francisco, California,
June 7, 1946.

FRANK J. CREEDE,
Counsel for Petitioners.

KEITH, CREEDE & SEDGWICK,
MCCOMB & NORDMARK,
GODFREY NORDMARK,
Of Counsel.

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	2
Questions presented.....	2
Statutes and rules involved.....	3
Statement.....	3
Argument.....	7
Conclusion.....	12
Appendix.....	13

CITATIONS

Cases:

<i>Craig v. The Hartford</i> , 1 McAll. 91, Fed. Case No. 3,333....	8
<i>Liberty Mutual Insurance Co. v. Pillsbury</i> , October Term, 1946, No. 128.....	8, 10
<i>O'Donnell v. Great Lakes Co.</i> , 318 U. S. 36.....	9
<i>Parker v. Motor Boat Sales</i> , 314 U. S. 244.....	9
<i>Royal Indemnity Co. v. Puerto Rico Cement Corp.</i> , 142 F. 2d 237, certiorari denied, 323 U. S. 756.....	3
<i>Seas Shipping Co., Inc. v. Sieracki</i> , October Term, 1945, No. 365, decided April 22, 1946.....	10

Statutes:

Act of May 17, 1928, c. 612, 45 Stat. 600, D. C. Code, 1940, Title 36, c. 5, § 1.....	9
Defense Bases Act of August 16, 1941, c. 357, 55 Stat. 622 and 56 Stat. 1035, 42 U. S. C. Supp. V, 1651.....	4, 13
Longshoremen's & Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 <i>et seq.</i>	4, 5

Miscellaneous:

3 Moore, <i>Federal Practice</i> , pp. 3044-3045 and Supp. 1945 pp. 50-54.....	11
Federal Rules of Civil Procedure:	
Rule 12.....	12
Rule 41 (b).....	11, 15
Rule 50.....	11
Rule 52 (a).....	11
Rule 58.....	6, 7, 15
Rule 79 (a).....	6, 7, 15
Rule 81 (a) (6).....	9, 16



In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 158

**J. E. HADDOCK, LIMITED, AND UNITED PACIFIC
INSURANCE COMPANY, PETITIONERS**

v.

**WARREN H. PILLSBURY, DEPUTY COMMISSIONER,
AND HUGH A. VORIS, ASSISTANT DEPUTY COM-
MISSIONER, UNITED STATES EMPLOYEES' COMPEN-
SATION COMMISSION, AND ADELA F. MUCH**

***ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT***

**BRIEF FOR RESPONDENTS PILLSBURY, DEPUTY COM-
MISSIONER, AND HUGH A. VORIS, ASSISTANT DEPUTY
COMMISSIONER, IN OPPOSITION**

OPINIONS BELOW

The opinion of the District Court of the Northern District of California, Southern Division (R. 18-19) is reported at 60 F. Supp. 806. A memorandum decision of the United States Circuit Court of Appeals for the Ninth Circuit on dismissal of the appeal is not included in the

record but is reported at 154 F. 2d 1018. The opinion of the Circuit Court of Appeals on petition for rehearing (R. 199-203) is not yet reported.¹

JURISDICTION

The decree of the Circuit Court of Appeals, dismissing the appeal, was entered on April 5, 1946 (R. 194).² A petition for rehearing was filed on April 17, 1946. The petition for rehearing was denied by an opinion filed on May 2, 1946. The petition for certiorari was filed on June 10, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTIONS PRESENTED

1. Whether a district court proceeding to review a compensation order under the provisions of the Longshoremen's and Harbor Workers' Act, as made applicable to employees at defense base areas by the Defense Bases Act, is a proceeding which must be brought on the admiralty side of

¹ The memorandum decision on dismissal of the appeal is dated April 5, 1946. 154 F. 2d 1018. On April 25, 1946, the court below rendered an opinion on a petition for rehearing (R. 195, 199) and, on the same day, ordered the district court clerk to certify to it certain civil docket entries in the case (R. 195). On receipt of these district court docket entries, the court below withdrew its April 25 opinion on rehearing and substituted the opinion of May 2, 1946, which appears in the record (R. 196-198, 199-203).

² The record contains a district court order signed by Judge Roche (R. 195-196) which does not appear to be part of this case.

the court and governed by admiralty rules of procedure.

2. Whether, in such a proceeding, the district court is required by Rule 52 (a) of the Federal Rules of Civil Procedure to make findings of fact.

3. Whether, in a district court proceeding to review a compensation order under the Defense Bases Act, an order of dismissal signed by the district judge, filed as part of the record in the case and duly noted in the district court civil docket, is a final order.

4. Whether the time permitted for appeal to a circuit court of appeals must be calculated from the date of the notation of such order of dismissal in the district court civil docket, absent a petition for rehearing or other proceeding subsequent to judgment in the district court seeking to alter the rights already adjudicated.

STATUTES AND RULES INVOLVED

Relevant statutes and rules of procedure are set forth in the Appendix, *infra*, pp. 13-16.

STATEMENT

On October 18, 1943, Robert Much, while employed by petitioner Haddock on a United States public works contract in Canada, sustained personal injury in the course of his employment which resulted in his death on the same day (R. 11-12). On December 9, 1943, the father and mother of the deceased filed claims for compensa-

tion (R. 36-37, 40-41) in accordance with the provisions of the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*) as made applicable to employees at defense base areas and other places by the Defense Bases Act of August 16, 1941, 55 Stat. 622, 42 U. S. C. Supp. V, 1651-1654, *infra*, pp. 13-14 (R. 10-11). On January 25, 1944, a claim for compensation was also filed by respondent Adela Much, widow of the deceased, under the Defense Bases Act (R. 44-45). Petitioners resisted the claims of the parents on the ground that they were not dependents of the deceased, and the claim of respondent Much on the ground that she was not his widow within the meaning of the statute (R. 38-39, 42-43, 46-47, 50-51). After an unsuccessful effort to settle the claims (R. 50), a consolidated hearing was held on May 24, 1944, before respondent Voris, Assistant Deputy Commissioner (R. 48-180). Findings of fact were made by respondent Voris on June 29, 1944 (R. 11-13) and a compensation order was entered in favor of the claimants (R. 13-14).

This proceeding to review the compensation order in favor of respondent Much was instituted by complaint filed on July 28, 1944, in the District Court of the Northern District of California, Southern Division (R. 2-9, 196) in accordance with the provisions of Section 21 (b) of the

Longshoremen's Act (R. 2-3).³ On October 13, 1944, a motion to dismiss the complaint was made on behalf of the Deputy Commissioner and the Assistant Deputy Commissioner on the grounds that the complaint failed to state a claim upon which relief could be granted, that the Assistant Deputy Commissioner's findings of fact were supported by evidence and were, accordingly, final and conclusive, and that the compensation order was in accordance with law (R. 17-18).⁴ The case was heard in the district court on January 22, 1945 (R. 197). On March 15, 1945, the district judge held that the Assistant Deputy Commissioner's finding, that respondent Much was the deceased's widow within the meaning of the statute, was supported by evidence and was not to be disturbed on review (R. 18-19). Accordingly, he ordered the complaint dismissed (R. 19). On the same day, the order of dismissal, duly signed by the district judge (R. 19), was filed as part of the record in the case and the district court clerk made the required notation in the docket (R. 197).

³ The procedure for judicial review of compensation awards contained in Section 21 (b) is applicable to awards made under the Defense Bases Act of August 16, 1941, *infra*, pp. 13-14. The district court is empowered to set aside the compensation order " * * * if not in accordance with law * * *." Section 21 (b) of the Longshoremen's Act.

⁴ A certified transcript of the entire record before the Assistant Deputy Commissioner was before the district court as part of the complaint (R. 8, 17, 32-35, 196).

On June 14, 1945, prepared findings of fact were signed by the district judge and filed by the district court clerk (R. 20-23). On August 27, 1945, a prepared formal judgment was signed by the district judge and filed by the clerk (R. 197).⁵

Petitioners, by a notice of appeal filed September 14, 1945, sought to appeal from the "judgment" of August 27, 1945 (R. 25). Respondents suggested lack of jurisdiction to the court below on the ground that the dismissal order of March 15, 1945, was final and that petitioners' time for appeal had expired on June 15, 1945. This jurisdictional objection was sustained and the appeal was dismissed on April 5, 1946 (R. 194). On April 25, 1946, the court below rendered an opinion on petition for rehearing (R. 199) which held that the signed order of March 15, 1945, was a final disposition of the case in the district court and that it would be presumed that the district court clerk had made the required notation in

⁵ Contrary to petitioners' assertion (Pet. 4), the district court clerk did not make the notation under Rule 79 (a), F. R. Civ. P., *infra*, pp. 15-16, as to the formal judgment of August 27, 1945 (R. 197). The docket merely shows that the August 27 "judgment" was filed (R. 197). The brief notation required by Rule 79 (a) was made as to the dismissal order of March 15, 1945 (R. 197).

Petitioners also assert that the judgment of August 27 was prepared and submitted pursuant to Rule 58 of the Federal Rules of Civil Procedure (Pet. 3-4). Since the final decision in the case was an order of dismissal, no settlement or approval of a form of judgment was required by Rule 58.

the civil docket (R. 200). To avoid resting its opinion on a presumption (R. 200), the court below ordered the district court clerk to certify to it the pertinent civil docket entries (R. 195). After receiving these certified docket entries on April 26, 1946 (R. 196-198), the court below withdrew its opinion of April 25 and rendered its opinion of May 2, 1946 (R. 198-203). The court below rejected petitioners' contention in their application for rehearing that the question of entry of judgment in the district court had to be decided by treating the proceeding as brought (and, presumably, the appeal taken) in admiralty (R. 200). The entry of final order or judgment in accordance with Rule 58 and Rule 79 (a) of the Federal Rules of Civil Procedure was recognized as the decisive factor in determining whether the appeal was timely (R. 199, 201-203). The court below held that the final order of dismissal of March 15, 1945, was duly noted in the district court docket on the same day and that, accordingly, judgment was entered on that day pursuant to Rule 58 for the purpose of calculating petitioners' time to appeal (R. 203).

ARGUMENT

The district court order of dismissal of March 15, 1945, was clearly a final decision, appealable to the court below. Petitioners' time within which to appeal began to run on the same day, the date of notation of the dismissal order in the district

court civil docket, and expired on June 15, 1945. Accordingly, petitioners' appeal to the court below, taken on September 14, 1945, was out of time. The situation involved and the question upon which review is herein sought are identical with *Liberty Mutual Insurance Co. v. Pillsbury*, No. 128, this Term. For the reasons set forth in our brief in opposition in the *Liberty Mutual Insurance* case, we submit that the action of the court below herein, dismissing the appeal, was correct and that no further review is warranted. Certain contentions advanced by petitioners herein and not discussed in the *Liberty Mutual* case are briefly noted below.

1. Petitioners suggest that the compensation order here involved was made under the Longshoremen's Act, and that, accordingly, a district court proceeding to review the order is a suit in admiralty and necessarily "* * * subject to the principles of admiralty jurisprudence * * *" (Pet. 5). From this, they urge that the dismissal order of March 15 could not be considered a final decision because it failed to provide for the taxation of costs (Pet., p. 11).⁶ In answer to this argument, first, it should be noted that the compensation award here involved

⁶ That the failure to provide for the taxation of costs or for other ministerial matters has never been held to affect the character of an order as final, is shown at p. 13 of our brief in opposition in the *Liberty Mutual* case. The same rule applies in admiralty. *Craig v. The Hartford*, 1 McAll. 91, Fed. Case No. 3,333 (C. C. D. Cal.).

was not made under the Longshoremen's Act as such, but under the Defense Bases Act, *supra*. The deceased employee was killed by an overturned truck which he was driving (R. 11-12) while employed by petitioner Haddock on a public works contract of the United States in Canada, namely, the Alaska Highway (R. 50, 11). None of the basic questions of exclusive federal maritime jurisdiction or of the nature of an exercise of federal power over navigable waters, which arose prior to the passage of the Longshoremen's Act and which still arise under that Act, are involved herein. Cf. *Parker v. Motor Boat Sales*, 314 U. S. 244; *Royal Indemnity Co. v. Puerto Rico Cement Corp.*, 142 F. 2d 237 (C. C. A. 1), certiorari denied, 323 U. S. 756. In the Defense Bases Act, Congress merely utilized the existing framework of the Longshoremen's Act to provide a uniform compensation scheme for military areas and other places occupied and used by the Government for military purposes. *Royal Indemnity Co. v. Puerto Rico Cement Corp.*, *supra*, at 239. It has similarly used the same scheme to provide a compensation law for the District of Columbia. Act of May 17, 1928, c. 612, 45 Stat. 600, D. C. Code, 1940, Title 36, c. 5, § 1. Second, even if this had been a proceeding to review a Longshoremen's Act award, it was governed by the Federal Rules of Civil Procedure. Rule 81 (a) (6). The power of Congress to prescribe these rules for judicial review of Longshoremen's Act awards cannot be doubted. *O'Donnell v. Great Lakes Co.*, 318 U. S.

36, 40. Third, even if petitioners' right to review the compensation award herein could be considered a right peculiar to the maritime law, it is well settled that such a right may be enforced on the law side of the court. *Seas Shipping Co., Inc. v. Sieracki*, No. 365, Oct. T., 1945, decided April 22, 1946, p. 2 of slip opinion. Finally, petitioners chose to institute their review proceeding on the civil side and sought to appeal to the court below by the simple filing of a notice of appeal. Apparently, petitioners wish to limit the application of the admiralty jurisprudence for which they here contend to a consideration of the entry of judgment on the final decision of the district court on March 15, 1945, in order that they may extend the period for appeal.

2. Petitioners urge a right to independent findings of fact by the district judge and contend that the decision below deprives them of this right;¹ here again, they rely on the Federal Rules of Civil Procedure rather than on the Admiralty Rules. As we have indicated in our Brief in Opposition in the *Liberty Mutual* case, No. 128, we do not believe that independent findings of fact by district judges in review proceedings of this type are

¹ The status of respondent Much as deceased's widow was the only point on which petitioners sought review in the district court and as to which they sought to appeal (R. 6, 188-189). As to this point, the "finding of fact" by the district judge was merely a recital that the Assistant Deputy Commissioner had found that she was the widow of the deceased within the meaning of the statute (R. 21).

proper or that petitioners have a "right" to such findings (Br. in Opp., pp. 7-9).*

One facet of petitioners' findings-of-fact argument herein should be noticed. Petitioners describe the motion made on behalf of respondents Pillsbury and Voris in the district court as a motion to dismiss "* * * under Rule 41 of the Federal Rules of Civil Procedure * * * on the ground that upon the facts and the law the complainants had shown no right to relief * * *" (Pet. 3). From this, they argue that the "determinative question" is whether a district court must make findings of fact under Rule 52 (a) of the Federal Rules of Civil Procedure in granting a motion to dismiss under Rule 41 (b) (Pet. 9). The motion made on behalf of respondents, Pillsbury and Voris herein is clearly not a motion under Rule 41 (b). A motion under Rule 41 (b) *infra*, p. 15, is made in a jury or non-jury district court trial upon the completion of complainant's evidence. It is in the nature of a motion to order an involuntary nonsuit and, in jury trials, supplements the motion for a directed verdict which is provided for by Rule 50. 3 Moore, *Federal Practice*, pp. 3044-3045; *id.*, Supp. 1945, pp. 50-54. The motion to dismiss herein was addressed to the complaint, including the certified transcript of the proceedings before the Assistant Deputy Commis-

* None of the cases cited by petitioners in the conflict which they assert as to findings of fact by district judges involves review of compensation proceedings (Pet. 9-10).

sioner (R. 17), and was made prior to any hearing. It brought to issue the single question of law involved in the proceeding, namely, whether the compensation order under attack was in accordance with law, by moving to dismiss on the ground that the complaint did not state a claim upon which relief could be granted. Obviously, such a motion was not under Rule 41 (b) but was a motion to dismiss under Rule 12.

CONCLUSION

The decision below is correct and there is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

J. HOWARD McGRATH,
Solicitor General.

JOHN F. SONNETT,
Assistant Attorney General.

PAUL A. SWEENEY,
SAMUEL D. SLADE,
Attorneys.

JULY 1946.

APPENDIX

1. STATUTES

A. The Defense Bases Act of August 16, 1941, c. 357, Sec. 1, as amended, 55 Stat. 622 and 56 Stat. 1035, 42 U. S. C., Supp. V, 1651, provides in pertinent part:

That (a) except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended, shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor

or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1), (2), and (3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this Act, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract; irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

2. FEDERAL RULES OF CIVIL PROCEDURE

A. Rule 41 (b) provides:

(b) *Involuntary dismissal: Effect thereof.*—For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

B. Rule 58 provides in pertinent part:

Entry of Judgment.—* * * When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry.

C. Rule 79 (a) provides:

(a) *Civil Docket.*—The clerk shall keep a book known as “civil docket” of such

form and style as may be prescribed by the Attorney General under the authority of the Act of June 30, 1906, c. 3914, § 1 (34 Stat. 754), as amended, U. S. C., Title 28, § 568, or other statutory authority, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

D. Rule 81 (a) (6), as amended on December 28, 1939, provides in pertinent part:

These rules * * * apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, sections 18, 21 (44 Stat. 1434, 1436), U. S. C., Title 33, Sections 918, 921, except to the extent that matters of procedure are provided for in that Act.

FILE COPY

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1946

No. 158

J. E. HADDOCK, LIMITED, and UNITED
PACIFIC INSURANCE COMPANY,
Petitioners,
vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner and HUGH A. VORIS, Assistant
Deputy Commissioner, of the United
States Employees' Compensation Com-
mission for the 13th Compensation Dis-
trict, and ADELA F. MUCH,
Respondents.

PETITION FOR A REHEARING.

FRANK J. CREEDE,
220 Bush Street, San Francisco 4, California,
Counsel for Petitioners.

KEITH, CREEDE & SEDGWICK,
McCOMB & NORDMARK,
GODFREY NORDMARK,
220 Bush Street, San Francisco 4, California,
Of Counsel.

Office - Supreme Court
FILED
NOV 6
CHARLES ELMORE



Subject Index

	Page
Probability exists that the judgment and opinion of the Circuit Court of Appeals will seriously hinder future administration of the law and it is therefore a matter of public interest that the cause be decided by this court....	2

Table of Authorities Cited

Cases	Page
Anderson v. United States, 318 U. S. 350.....	4
Federal Trade Commission v. American Tobacco Co., 274 U. S. 543	4
Magnum Import Co. v. Coty, 262 U. S. 159.....	4
McNabb v. United States, 318 U. S. 332.....	4
Monarch Brewing Co. v. George J. Meyer Mfg. Co., 130 F. 2d 582	3
Peoples Bank v. Federal Reserve Bank of San Francisco, 149 F. 2d 850.....	3
Perry v. Baumann, 122 F. 2d 409.....	2
Reconstruction Finance Corp. v. Prudence S.A. Group, 311 U. S. 579	4
Rorick v. Commissioners, 307 U. S. 208.....	4
Thiel v. Southern Pac. Co., 66 S. Ct. 984.....	4
Uhl v. Dalton, 151 F. 2d 502.....	3
Young v. United States, 111 F. 2d 823.....	2
Rules	
Federal Rules of Civil Procedure, Rule 41(b).....	2

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

LONDON

Printed by J. St. John, at the Black-Swan, in St. Dunstons Church-yard, 1679.

THE SECOND EDITION, CORRECTED AND ENLARGED.

1724.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1946

No. 158

J. E. HADDOCK, LIMITED, and UNITED
PACIFIC INSURANCE COMPANY,

Petitioners,

VS.

WARREN H. PILLSBURY, Deputy Commissioner and HUGH A. VORIS, Assistant Deputy Commissioner, of the United States Employees' Compensation Commission for the 13th Compensation District, and ADELA F. MUCH,

Respondents.

PETITION FOR A REHEARING.

To the Honorable Supreme Court of the United States:

Petitioners, J. E. Haddock, Limited, and United Pacific Insurance Company, respectfully petition for a rehearing in the above entitled cause upon the following ground:

(1)

PROBABILITY EXISTS THAT THE JUDGMENT AND OPINION OF THE CIRCUIT COURT OF APPEALS WILL SERIOUSLY HINDER FUTURE ADMINISTRATION OF THE LAW AND IT IS THEREFORE A MATTER OF PUBLIC INTEREST THAT THE CAUSE BE DECIDED BY THIS COURT.

The District Court and counsel for the parties regarded the motion to dismiss filed by respondents on October 13, 1944 (R 17, 18), as made under Rule 41 (b) of the Federal Rules of Civil Procedure. All believed that in their circuit the decisions of the Circuit Court of Appeals made it mandatory that ruling on the motion be followed by formal findings of fact and conclusions of law before a final judgment could be entered in the action. (*Young v. United States*, 111 F. 2d 823, 834; *Perry v. Baumann*, 122 F. 2d 409, 410.) Accordingly, when the District Court ruled on the motion on March 15, 1945, its "Memorandum Opinion and Order Sustaining Order of Compensation Commissioner" (R 18, 19) was not regarded as a final decision, for on June 7, 1945, respondents prepared, served upon petitioners, and lodged with the clerk of the District Court, formal findings of fact and conclusions of law which the trial judge signed on June 14, 1945 (R 20-23), and on August 27, 1945, respondents prepared, served upon petitioners, and the trial judge signed, a formal judgment in the action pursuant to the findings of fact and conclusions of law (R 23, 24). All believed that under the decisions of the Circuit Court of Appeals in their circuit their conception and interpretation that the final judgment

in the action was the formal judgment of August 27, 1945, and not the informal "Memorandum Opinion and Order" of March 15, 1945, would be accepted and respected on appeal. (*Uhl v. Dalton*, 151 F. 2d 502; *Peoples Bank v. Federal Reserve Bank of San Francisco*, 149 F. 2d 850, 851; *Monarch Brewing Co. v. George J. Meyer Mfg. Co.*, 130 F. 2d 582.)

On the theory that the informal "Memorandum Opinion and Order" of March 15, 1945, was the final judgment in the action, the Circuit Court of Appeals dismissed the appeal from the formal judgment of August 27, 1945. (R 193-203.) The dismissal is intolerant to a fair standard of appellate procedure in federal courts. It sets up a standard which demands the taking of appeals from informal orders, which a trial judge by statement or conduct disavows as his final judgment in the action, because of fear that appellate courts will not accept or respect the disavowal. The standard invites and encourages appeals which appellants believe needless and premature but which they must prosecute because they are forced to distrust both trial and appellate courts.

The standard is an unfair one in its application to any type of case. Its unfairness is marked in cases like the present where the proceedings are under a remedial statute, the Longshoremen's and Harbor Workers' Compensation Act (R 199), and the hearing of appeals on the merits should be particularly favored and furthered. Here it was the employer and its insurance carrier that were trapped by the

procedural fogs. But the same procedural fogs will equally entrap employees seeking compensation under the Act. Clearly, probability exists that the judgment and opinion of the Circuit Court of Appeals will seriously hinder future administration of the law and it is therefore a matter of public interest that the cause be decided by this court.

This court has said that issuance of certiorari is justified when such probability exists.

Federal Trade Commission v. American Tobacco Co., 274 U.S. 543.

This court has also said that issuance of certiorari is justified when an important question of public interest is involved.

Magnum Import Co. v. Coty, 262 U.S. 159.

Recurrently, this court has exercised its power of supervision over the administration of justice in the federal courts.

Thiel v. Southern Pac. Co., 66 S.Ct. 984, 988;
Anderson v. United States, 318 U.S. 350, 351;
McNabb v. United States, 318 U.S. 332, 333-342;

Reconstruction Finance Corp. v. Prudence S.A. Group, 311 U.S. 579, 583;

Rorick v. Commissioners, 307 U.S. 208, 213.

Wherefore petitioners pray that the order denying the petition for certiorari be revoked and the writ ordered to issue.

Dated, San Francisco, California,
October 30, 1946.

FRANK J. CREEDE,
Counsel for Petitioners.

KEITH, CREEDE & SEDGWICK,
McCOMB & NORDMARK,
GODFREY NORDMARK,
Of Counsel.

the following conditions must be met: the subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

The subject must be a person of legal age, of sound mind and body, and of legal capacity.

CERTIFICATE OF COUNSEL.

The undersigned, counsel for petitioners herein, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated, San Francisco, California,
October 30, 1946.

FRANK J. CREEDE,
Counsel for Petitioners.